IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 21ST DECEMBER 2006 / 30TH AGRAHAYANA 1928

WP(C).No. 20725 of 2006(P)

OS.741/2001 of PRL.M.C.,IRINJALAKUDA
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PETITIONER:

SOOSIE, AGED 66 YEARS,
W/O.XAVIER, KUNDUPARAMBIL HOUSE,
ARIPALAM, IRINJALAKUDA.

BY ADV. SRI.RENJITH THAMPAN
SMT.P.R.REENA

RESPONDENTS:
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1. SUJATHAN,
S/O.APPU, EZHAPPILLY HOUSE,
ARIPALAM, THRISSUR.

2. UNNIKRISHNAN,
S/O.DO. DO.

BY ADV. SRI.MANOJ SUBRAMANIAN

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 21/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX:

EXT.P1: COPY OF COMMISSION REPORT WITH SURVEY SKETCH IN OS 741/01 MUNSIFF COURT, IRINJALAKUDA DT.21.11.02

EXT.P2: COPY OF ORDER IN IA 392/06 IN OS 741/01 OF MUNSIFF COURT, IRINJALAKUDA

EXT.P3: COPY OF ORDER IN OS 741/01 DT.29.3.06 OF MUNSIFF COURT, IRINJALAKUDA

//True copy//

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

W.P.(C) .NO. 20725 OF 2006

Dated 21st December 2006

JUDGMENT

Petitioner is the plaintiff. Respondents are defendants. A Commissioner was originally appointed. The Commissioner submitted report and plan. Thereafter petitioner filed I.A.392/06, to set aside the report and plan submitted by the Commissioner. Under Ext.P2 order, the petition was dismissed on the ground that it is belated. Subsequently evidence in the suit was recorded. Learned Munsiff then found that identification made by the Commissioner in the report and plan is not sufficient to resolve the dispute involved in the suit. Learned Munsiff therefore passed Ext.P3 order and remitted the report and plan back to the Commissioner with a direction to submit a further report. This petition is filed under Article 227 of Constitution of India challenging Ext.P3 order.

2. Learned counsel appearing for petitioner was heard.

3. Argument of learned counsel appearing for

petitioner is that report submitted by the Commissioner establish that he did not appreciated the contentions raised by the parties and the report and plan are not at all helpful to any of the parties or to the court. According to the counsel it was for that reason petitioner had earlier filed an application to set aside the report which was dismissed by the court on the ground of delay. Subsequently when evidence was recorded learned Munsiff was satisfied that, case cannot be decided on the basis of the report and plan submitted by the Commissioner. It was in such circumstance, Ext.P3 order was passed. Arguments of learned counsel appearing for petitioner was that by remitting the report back to the same commissioner, no purpose will be served as the commissioner may again submit similar report. I find some force in the submission of learned counsel appearing for petitioner.

4. Ext.P3 order is quashed to the limited purpose for deciding the question whether the report is to be remitted back to the Commissioner or a fresh commission is to be appointed. Learned Munsiff may consider whether the same commissioner could successfully submit a report after proper

identification to resolve the dispute involved in the suit and if not whether a new commission is to be appointed. Learned Munsiff may pass appropriate order after hearing both parties.

Writ petition is disposed accordingly.

M.SASIDHARAN NAMBIAR,
JUDGE.

uj.